Filed 6/17/16 P. v. Guzman CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. LUIS TAPIA GUZMAN, Defendant and Appellant.	G052752 (Super. Ct. No. 95CF0698) O P I N I O N

Appeal from an order of the Superior Court of Orange County, Cheri T. Pham, Judge. Affirmed.

Athena Shudde, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

In 1996, appellant Luis Tapia Guzman was convicted of gross vehicular manslaughter while intoxicated and driving under the influence of alcohol or drugs with a blood alcohol level over the legal limit, causing injury. (Pen. Code, § 191.5, subd. (a), Veh. Code, § 23153, subds. (a) & (b).) The trial court found it true that appellant had suffered two prior convictions under California's Three Strikes law. He was sentenced to 25 years to life in prison for the manslaughter offense, and sentence on the other counts was imposed and stayed pursuant to Penal Code section 654.[1]

Eighteen years later he petitioned for relief under Proposition 36. He was refused because his crimes did not qualify for consideration under the new law. He appealed.

We appointed counsel to represent him on that appeal. Counsel filed a brief which set forth the procedural facts of the case (the facts of the crimes themselves are largely irrelevant because the argument is solely directed at Guzman's plea and the application to it of § 1170.18). Counsel did not argue against her client, but advised us there were no issues to argue on his behalf.

Guzman was invited to express his own objections to the proceedings against him, and filed with us a supplemental brief. The brief purports to concur with appellate counsel's "argument[s]," "but elects to expound more" on the merits of his claim under section 1170.126.

His position is that his crime is not a serious or violent felony under the definitions set forth in section 1170.126. That definition is contained in section 1192.7, and Guzman is correct that at the time he was sentenced, in 1996, his crimes were not *explicitly* named as serious or violent felonies in section 1192.7, subdivision (c).

But, in January 1997, a few months after appellant was convicted, the Legislature amended the statutory sentencing scheme to include appellant's crimes as

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1 All further statutory references are to the Penal Code.

serious felonies *by name*. Since the ameliorative statute under which appellant petitioned was passed in 2012, its definition of a serious felony would have included the 1997 amendment and would exempt appellant from its operation.

Appellant has apparently lived an exemplary life in prison. He has attached to his supplemental brief certificates evidencing good conduct and self-improvement while incarcerated. These are presumably intended to show he would not be a threat if released from prison. But that is not an issue we get to address. All we are allowed to decide is whether he falls within the ambit of Proposition 36, section 1170.18. He does not.

Under the law, we are required to review the record and see if we can find any issues that might result in a finding of error when an attorney tells us he/she is unable to. (*People v. Wende* (1979) 25 Cal.3d 436.) We have done so. We have looked not just at the issues Guzman and his attorney raised but for whatever other issues might exist. It should be emphasized that our search was not for issues upon which Guzman *would* prevail, but only issues upon which he *might possibly* prevail.

We have found no such issue. Appellate counsel was correct in concluding there was no arguable issue on appeal.

The order is affirmed.

BEDSWORTH, ACTING P. J.

WE CONCUR:

MOORE, J.

ARONSON, J.